

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 8 of the Lincoln Municipal Code relating to  
2   Health and Sanitation by creating a new Chapter 8.48 entitled the Lincoln Smokefree Air Act  
3   by adding a new section numbered 8.48.010 to set forth the title of the Chapter; adding a new  
4   section numbered 8.48.020 to set forth the purpose of the Chapter; adding a new section  
5   numbered 8.48.030 to set forth general provisions regarding definitions used in the Chapter;  
6   adding new sections numbered 8.48.040 through 8.48.130 to provide definitions for  
7   employee, employer, guestroom or suite, health director, indoor area, international no-  
8   smoking symbol, place of employment, proprietor, public place, smoke or smoking,  
9   respectively; adding a new section numbered 8.48.140 to provide exceptions to the provisions  
10   of the chapter; adding a new section numbered 8.48.150 to require the posting of “no  
11   smoking” signs; adding a new section numbered 8.48.160 to provide for the enforcement of  
12   the provisions of the chapter; adding a new section 8.48.170 to provide penalties for  
13   violations of the chapter; adding a new section numbered 8.48.180 to provide for severability  
14   of the chapter; and providing that this ordinance shall become effective six months after City  
15   Council approval.

16           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

17           Section 1. That Title 8 of the Lincoln Municipal Code be amended by adding  
18   a new section numbered 8.48.010 to read as follows:

19   **8.48.010**   **Title.**

20           This Chapter shall be known as the Lincoln Smokefree Air Act.

1           Section 2. That Title 8 of the Lincoln Municipal Code be amended by adding  
2 a new section numbered 8.48.020 to read as follows:

3    **8.48.020     Purpose.**

4           The City Council does hereby find and declare that the purpose of this Chapter is to  
5 protect the health and welfare of employees and the public by prohibiting smoking at places  
6 of employment and public places.

7           It is therefore declared to be the public policy of this City to eliminate and prevent  
8 health and safety risks posed by smoking at places of employment and public places. The City  
9 Council authorizes the Health Director of the Lincoln-Lancaster County Health Department  
10 and law enforcement to administer and enforce this Chapter within the City of Lincoln.

11          Section 3. That Title 8 of the Lincoln Municipal Code be amended by adding  
12 a new section numbered 8.48.030 to read as follows:

13    **8.48.030     Definitions; General Provisions.**

14           For the purposes of this Chapter, the following words and phrases shall have the  
15 meaning ascribed to them by this Chapter.

16          Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding  
17 a new section numbered 8.48.040 to read as follows:

18    **8.48.040     Definition; Employee.**

19           Employee shall mean a person who is employed by an employer in consideration for  
20 direct or indirect monetary wage(s), profit, or other remuneration.

21          Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding  
22 a new section numbered 8.48.050 to read as follows:

1     **8.48.050**     **Definition; Employer.**

2             Employer shall mean any of the following with one or more employees: a person, non-  
3     profit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership,  
4     limited liability company, co-op, firm, trust, association, organization, or other business entity  
5     formed for profit-making purposes, including retail establishments where goods or services are  
6     sold.

7             Section 6. That Title 8 of the Lincoln Municipal Code be amended by adding  
8     a new section numbered 8.48.060 to read as follows:

9     **8.48.060**     **Definition; Guestroom or Suite.**

10            Guestroom or suite shall mean sleeping rooms and directly associated private areas,  
11    such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their  
12    exclusive transient occupancy at a hotel or motel.

13            Section 7. That Title 8 of the Lincoln Municipal Code be amended by adding  
14    a new section numbered 8.48.070 to read as follows:

15    **8.48.070**     **Definition; Health Director.**

16            Health Director shall mean the Director of the Lincoln-Lancaster County Health  
17    Department or authorized representative(s).

18            Section 8. That Title 8 of the Lincoln Municipal Code be amended by adding  
19    a new section numbered 8.48.080 to read as follows:

20    **8.48.080**     **Definition; Indoor Area.**

21            Indoor area shall mean the area within a structure enclosed or closed in by a roof and  
22    three or more walls, windows, or other impermeable surfaces that form a continuous

1 perimeter, with appropriate openings for ingress and egress. The roof, wall, or windows of  
2 the structure are not required to be solid or permanent, nor are the walls or windows required  
3 to be attached or extend to the roof to be considered an indoor area.

4           Section 9. That Title 8 of the Lincoln Municipal Code be amended by adding  
5 a new section numbered 8.48.090 to read as follows:

6 **8.48.090       Definition; International No-Smoking Symbol.**

7           International no-smoking symbol shall mean a pictorial representation of a burning  
8 cigarette enclosed in a red circle with a red bar across it.

9           Section 10. That Title 8 of the Lincoln Municipal Code be amended by adding  
10 a new section numbered 8.48.100 to read as follows:

11 **8.48.100       Definition; Place of Employment.**

12           Place of employment shall mean an indoor area under the control of a proprietor that  
13 an employee accesses as part of the course of employment without regard to whether work  
14 is occurring at any given time. The indoor area shall include, but is not limited to, work areas,  
15 employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee  
16 cafeterias, and hallways. A private residence shall not be considered a “place of employ-  
17 ment”.

18           Section 11. That Title 8 of the Lincoln Municipal Code be amended by adding  
19 a new section numbered 8.48.110 to read as follows:

1     **8.48.110     Definition; Proprietor.**

2             Proprietor shall mean the person who ultimately controls, governs, or directs the  
3     activities in a place of employment or public place. A proprietor may be, but is not limited  
4     to the following: employer, owner, operator, supervisor, or manager.

5             Section 12. That Title 8 of the Lincoln Municipal Code be amended by adding  
6     a new section numbered 8.48.120 to read as follows:

7     **8.48.120     Definition; Public Place.**

8             Public Place shall mean an indoor area to which the public is invited or in which the  
9     public is permitted, whether or not the public is invited at that time. A private residence shall  
10    not be considered a “public place”.

11            Section 13. That Title 8 of the Lincoln Municipal Code be amended by adding  
12    a new section numbered 8.48.130 to read as follows:

13    **8.48.130     Definition; Smoke or Smoking.**

14            Smoke or Smoking shall mean inhaling, exhaling, burning, or carrying any lighted  
15    cigar, cigarette, pipe, weed, plant, or other tobacco substance in any manner or in any form.

16            Section 14. That Title 8 of the Lincoln Municipal Code be amended by adding  
17    a new section numbered 8.48.140 to read as follows:

18    **8.48.140     Smoking Prohibited; Exceptions.**

19            (a)    It shall be unlawful for a proprietor of any place regulated by this Chapter to  
20    allow smoking in any place of employment or public place, except as follows:

1           (1)     Guestrooms or suites at a hotel or motel may be designated as smoking  
2 rooms provided, however, that not more than twenty percent (20%) of the total guestrooms  
3 or suites may be so designated.

4           (2)     At times when a scientific laboratory or educational laboratory is  
5 conducting research into the health effects of smoking, research participants shall be allowed  
6 to smoke for the purposes of research.

7           (b)     This Chapter shall not be interpreted or construed to permit smoking where  
8 smoking is otherwise restricted by other applicable laws.

9           Section 15. That Title 8 of the Lincoln Municipal Code be amended by adding  
10 a new section numbered 8.48.150 to read as follows:

11 **8.48.150     Signs Required; Requirements.**

12           (a)     A proprietor shall post at least one sign at all entrances used by employee(s) or  
13 the public containing the international no smoking symbol or the words "No Smoking." If  
14 smoking is allowed in conformance with this Chapter within a place of employment or public  
15 place, then the appropriate signage shall be posted as follows:

16           (1)     Pursuant to Section 8.48.140(a)(1), if a guestroom or suite is to be  
17 designated as a smoking room, the proprietor shall post a sign which indicates smoking is  
18 allowed within the guestroom or suite. The sign shall include the words "Smoking Allowed"  
19 in print larger than one inch. There shall be a separately posted sign on each entrance.

20           (2)     Pursuant to Section 8.48.140(a)(2), if research is being conducted that  
21 requires a person to smoke, the proprietor shall post a temporary sign on all entrances used

1 by employee(s) or the public indicating that smoking is being allowed for the purposes of the  
2 research.

3 (b) The sign(s) shall be posted in a manner where a person using the entrance is  
4 able to observe the sign.

5 Section 16. That Title 8 of the Lincoln Municipal Code be amended by adding  
6 a new section numbered 8.48.160 to read as follows:

7 **8.48.160 Enforcement.**

8 The Health Director and law enforcement agencies are hereby authorized to inspect  
9 a place of employment or public place at any reasonable time to determine compliance with  
10 this Chapter.

11 Section 17. That Title 8 of the Lincoln Municipal Code be amended by adding  
12 a new section numbered 8.48.170 to read as follows:

13 **8.48.170 Violations and Penalties.**

14 (a) A proprietor of a place of employment or public place upon whom a duty is  
15 placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such  
16 duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of  
17 a misdemeanor, and upon conviction thereof, shall be punished by a fine of up to five  
18 hundred dollars (\$500) together with costs and/or up to six months in jail with:

19 (1) A minimum fine of one hundred dollars (\$100) and costs for the first  
20 offense.

21 (2) A minimum fine of two hundred dollars (\$200) and costs for the second  
22 offense.

1                   (3)     A minimum fine of five hundred dollars (\$500) and costs for the third and  
2     subsequent offenses.

3                   (b)     Each individual violation and each day that the violation continues to exist shall  
4     constitute a separate and distinct offense and shall be punishable as such.

5                   (c)     Every act or omission of whatsoever nature constituting a violation of any of the  
6     provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any  
7     proprietor, if said act or omission is made with the authorization, knowledge, or approval of  
8     the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said  
9     proprietor shall be punishable in the same manner as if said act or omission had been  
10    committed by such proprietor personally.

11                  (d)     The violations of any of the provisions of this Chapter by a proprietor shall be  
12    cause sufficient to justify the revocation or suspension of any permit or license that the  
13    proprietor has received from the City of Lincoln for the place of employment or public place.  
14    Such revocation or suspension shall be cumulative with the penalty imposed by this Chapter,  
15    any other ordinance of the City of Lincoln, and any other penalty imposed by law.

16                  Section 18. That Title 8 of the Lincoln Municipal Code be amended by adding  
17    a new section numbered 8.48.180 to read as follows:

18    **8.48.180     Severability.**

19                  Each section and subsection of this Chapter is hereby declared to be independent of  
20    every other section or subsection of this Chapter and invalidity of any section or subsection  
21    of this Chapter shall not invalidate any other section or subsection thereof.



1                   Section 19. That Sections 1 through 18 hereof be codified in the Lincoln  
2 Municipal Code as Chapter 8.48, the Lincoln Smokefree Air Act.

3                   Section 20. That the operative date of this ordinance shall be six months after  
4 City Council approval.

5                   Section 21. That this ordinance shall take effect and be in force from and after  
6 its passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2003:

\_\_\_\_\_  
**Mayor**